

**Assembly Bill No. 315**

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Passed the Assembly May 19, 2011

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*Chief Clerk of the Assembly*

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Passed the Senate July 1, 2011

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 2216.2 of the Business and Professions Code, to amend Sections 51003 and 51007 of the Financial Code, to amend Sections 675.5, 703, 703.1, 1620, 1760, 1760.5, 1760.7, 1761, 1763, 1763.1, 1764, 1764.1, 1764.2, 1764.3, 1765.1, 1765.2, 1765.3, 1765.4, 1766, 1768, 1774, 1775.4, 1775.5, 1779, and 1780.56 of, and to add Sections 1760.1, 1760.2, and 1765.5 to, the Insurance Code, and to amend Section 13210 of the Revenue and Taxation Code, relating to surplus line brokers, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

AB 315, Solorio. Surplus line brokers.

Existing law limits the ability of a surplus line broker to place any coverage with a nonadmitted insurer, as specified.

This bill would revise and recast the provisions governing surplus line brokers and nonadmitted insurers to make them consistent with the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), including, but not limited to, the duties, responsibilities, and licensure of surplus line brokers, taxation of surplus line insurance, and the eligibility of nonadmitted insurers to do business in this state. Certain provisions of the act would become operative on July 21, 2011. The bill would require that new or renewal policies, cancellations, or endorsements, and installment premiums be classified as provided for the purposes of addressing the requirements of Dodd-Frank, and these provisions would be inoperative as of October 18, 2012.

The bill would also make conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2216.2 of the Business and Professions Code is amended to read:

2216.2. (a) It is unprofessional conduct for a physician and surgeon to fail to provide adequate security by liability insurance,

or by participation in an interindemnity trust, for claims by patients arising out of surgical procedures performed outside of a general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(b) For purposes of this section, the board shall determine what constitutes adequate security.

(c) Nothing in this section shall require an insurer admitted to transact liability insurance in this state to provide coverage to a physician and surgeon.

(d) The security required by this section shall be acceptable only if provided by any one of the following:

(1) An insurer admitted pursuant to Section 700 of the Insurance Code to transact liability insurance in this state.

(2) An insurer that is eligible pursuant to Section 1765.1 of the Insurance Code.

(3) A cooperative corporation authorized by Section 1280.7 of the Insurance Code.

(4) An insurer licensed to transact liability insurance in at least one state of the United States.

SEC. 2. Section 51003 of the Financial Code is amended to read:

51003. (a) A person who engages in business as an exchange facilitator shall at all times comply with one or more of the following:

(1) Maintain a fidelity bond or bonds in an amount not less than one million dollars (\$1,000,000), executed by an insurer authorized to do business in this state or an eligible surplus line insurer pursuant to Section 1765.1 of the Insurance Code.

(2) Deposit an amount of cash or securities or irrevocable letters of credit in an amount not less than one million dollars (\$1,000,000) in an interest-bearing deposit account or a money market account with the financial institution of the person's choice. Interest on that amount shall accrue to the exchange facilitator.

(3) Deposit all exchange funds in a qualified escrow account or qualified trust, as those terms are defined under Treasury Regulation 1.1031(k)-1(g)(3), with a financial institution and provide that any withdrawals from that escrow account or trust require that person's and the client's written authorization.

(b) A person who engages in business as an exchange facilitator may maintain a bond or bonds or deposit an amount of cash or

securities or irrevocable letters of credit in excess of the minimum required amounts.

(c) If the person engaging in business as an exchange facilitator is listed as a named insured on one or more fidelity bonds that total at least one million dollars (\$1,000,000), the requirements of this section shall be deemed satisfied.

SEC. 3. Section 51007 of the Financial Code is amended to read:

51007. (a) A person who engages in business as an exchange facilitator shall at all times comply with either of the following:

(1) Maintain a policy of errors and omissions insurance in an amount not less than two hundred fifty thousand dollars (\$250,000), executed by an insurer authorized to do business in this state or an eligible surplus line insurer pursuant to Section 1765.1 of the Insurance Code.

(2) Deposit an amount of cash or securities or irrevocable letters of credit in an amount not less than two hundred fifty thousand dollars (\$250,000) in an interest-bearing deposit account or a money market account with the financial institution of the person's choice. Interest on that amount shall accrue to the exchange facilitator.

(b) A person who engages in business as an exchange facilitator may maintain insurance or deposit an amount of cash or securities or irrevocable letters of credit in excess of the minimum required amounts.

(c) If the person engaging in business as an exchange facilitator is listed as a named insured on an errors and omissions policy of at least two hundred fifty thousand dollars (\$250,000), the requirements of this section shall be deemed satisfied.

SEC. 4. Section 675.5 of the Insurance Code is amended to read:

675.5. (a) In addition to any policy of insurance specified in Section 675, this chapter shall apply to policies of commercial insurance issued or issued for delivery in this state which are issued and take effect or are renewed on or after January 1, 1987.

(b) As used in this section, commercial insurance means commercial multiperil, commercial property, commercial liability, commercial special multiperil, commercial comprehensive multiperil, errors and omissions liability, and professional liability

insurance, and any other insurance not included in subdivision (d) which covers any of the following contingencies:

(1) Loss of or damage to real property used or owned by a commercial or industrial enterprise.

(2) Loss of or damage to personal property, except personally owned motor vehicles, used in the conduct of a commercial or industrial enterprise.

(3) Legal liability of any person for loss of, damage to, or injury to persons or property, arising from the conduct of a commercial or industrial enterprise.

(c) As used in this section, the term commercial or industrial enterprise includes a business operated for profit, a professional practice, a nonprofit organization, or a governmental entity.

(d) As used in this section, the term commercial insurance does not include any of the following:

(1) Workers' compensation insurance.

(2) Insurance provided pursuant to the California FAIR plan or the California automobile assigned risk plan.

(3) Disability insurance.

(4) Automobile insurance covered by Section 660 and property insurance covered by Section 675.

(5) Ocean marine insurance.

(6) Fidelity and surety insurance.

(7) Surplus line insurance, which is nonadmitted insurance as defined in subdivision (m) of Section 1760.1.

(8) Reinsurance.

(9) Any insurance, other than professional liability insurance for malpractice, errors, or omissions, for which premiums are determined on a retrospective rating basis.

(10) Nuclear liability insurance.

(11) Nuclear property insurance.

SEC. 5. Section 703 of the Insurance Code is amended to read:

703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this state:

(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this state for a home state insured as defined in subdivision (f) of Section 1760.1.

(b) In any manner advertising a nonadmitted insurer in this state.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this state for a home state insured as defined in subdivision (f) of Section 1760.1.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this state the sum of five hundred dollars (\$500), together with one hundred dollars (\$100) for each month or fraction thereof during which he or she continues the violation. This section shall not apply to advertising authorized by Section 703.1, subdivision (h) of Section 1760.5, or Section 1773.

SEC. 6. Section 703.1 of the Insurance Code is amended to read:

703.1. (a) Any nonadmitted insurer that is an eligible surplus line insurer pursuant to Section 1765.1 may advertise in all media, provided that all of the following apply: (1) the insurer's unlicensed status in California is disclosed in type of a size no smaller than any telephone number, address, or fax number appearing in the advertisement or solicitation, (2) the advertisement does not contain any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, that is untrue, deceptive, or misleading, and that is known, or that by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, (3) the advertisement does not contain any information about the nonadmitted insurer's premiums or rates, and (4) no specific product shall be advertised in a newspaper of general circulation, in a television or radio broadcast, or in a news magazine of general circulation.

(b) Any nonadmitted insurer that is not an eligible surplus line insurer pursuant to Section 1765.1 may advertise in all media, except for media that are targeted primarily at insureds or prospective insureds residing in California, provided that all of the conditions set forth in subdivision (a) are complied with and the advertisement does not contain any information about the insurer's specific products.

(c) A group of nonadmitted insurers may advertise to the same extent as a nonadmitted insurer, subject to the same requirements set forth in subdivision (a) or (b), as applicable.

(d) An eligible nonadmitted insurer that is a member of a group of insurers may include the name of the group in advertisements that are authorized by this section.

(e) The permission to advertise granted by this section shall not be deemed to authorize an insurer to do business in this state.

SEC. 7. Section 1620 of the Insurance Code is amended to read:

1620. (a) The provisions of the preceding sections of this article shall not apply to any action, suit, or proceeding against any unauthorized foreign or alien insurer arising out of any contract of insurance effected in accordance with Section 1760, 1760.5, 1763, or 1763.1, or, if the contract is governed by and complies with the laws of the state in which the contract was entered. The provisions of Section 1610 shall apply to any action, suit, or proceeding under this section unless the insurer has designated an agent in California for service of process or the contract contains a provision designating a resident of this state or any firm of which one member is a resident of this state to be its true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding.

(b) In any action, suit, or proceeding arising out of any such contract of insurance, the court may require the insurer to file a bond, in an amount sufficient to secure the payment of any final judgment which may be rendered unless one or more of the following are applicable:

(1) The insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities in trust or otherwise, sufficient and available to satisfy any such final judgment and that it will pay the judgment without requiring suit to be brought thereon in the state where the securities or funds are located.

(2) At the time the insurer files any pleading in any action, suit, or proceeding instituted against it, the insurer is an eligible surplus line insurer in accordance with Section 1765.1, unless by facts presented to the court there is created a reasonable doubt as to the present ability of the insurer to satisfy any final judgment in the action, suit, or proceeding. Upon request of a party or the court, the unauthorized foreign or alien insurer or reinsurer shall provide the court and the party requesting the bond with copies of documents relating to the financial condition of the insurer,

including, but not limited to, copies of the insurer's most recent annual statement and audited financial report and, where applicable, a certified copy of the trust agreement required by subdivision (b) of Section 1765.2 and a verified copy of the most recent quarterly statement or list of assets in the trust.

(3) With respect to a contract of reinsurance issued in accordance with Section 1760.5, the reinsurer has complied with the provisions of this code necessary to permit the ceding insurer to take credit on its financial statement for the reinsurance as set forth in Section 922.4 or 922.5.

SEC. 8. Section 1760 of the Insurance Code is amended to read:

1760. (a) A home state insured, as defined in subdivision (f) of Section 1760.1, may negotiate and effect insurance to protect himself, herself, or itself against loss, damage, or liability with any nonadmitted insurer.

(b) Every home state insured that effects insurance governed by this chapter shall pay the tax imposed by Part 7.5 (commencing with Section 13201) of Division 2 of the Revenue and Taxation Code.

SEC. 9. Section 1760.1 is added to the Insurance Code, to read:

1760.1. For the purposes of this chapter, the following terms have the following definitions:

(a) "Certified" means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(b) "Commercial insured" means any person purchasing commercial insurance that, at the time of placement, meets all of the following requirements:

(1) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(2) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding 12 months.

(3) (A) The person meets at least one of the following criteria:



(i) The person possesses a net worth in excess of twenty million dollars (\$20,000,000), as that amount is adjusted pursuant to subparagraph (B).

(ii) The person generates annual revenues in excess of fifty million dollars (\$50,000,000), as that amount is adjusted pursuant to subparagraph (B).

(iii) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(iv) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000), as that amount is adjusted pursuant to subparagraph (B).

(v) The person is a municipality with a population in excess of 50,000 persons.

(B) Effective on January 1, 2015, and each fifth January 1 occurring thereafter, the dollar amounts in subparagraph (A) shall be adjusted to reflect the percentage change for that five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The commissioner shall issue a bulletin to all surplus line brokers advising of any adjustments and may adopt the calculations of the NAIC or other entity in doing so.

(c) “Domiciliary jurisdiction” means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(d) “Domiciliary state of the syndicate’s trust” means the state in which the syndicate’s trust fund is principally maintained and administered for the benefit of the syndicate’s policyholders in the United States.

(e) “Home state” means, except as provided in paragraphs (2) to (5), inclusive, any of the following, with respect to an insured or applicant:

(1) (A) The state in which the insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence.

(B) If 100 percent of the insured risk is located outside the state referred to in subparagraph (A), the state to which the greatest

percentage of the insured's taxable premium for that insurance contract is allocated.

(2) "Principal place of business" means, with respect to subparagraph (A) of paragraph (1) determining the home state of the insured, (A) the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities; or (B) if the insured's high-level officers direct, control, and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or (C) if the insured maintains its headquarters or the insured's high-level officers direct, control, and coordinate the business activities outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(3) "Principal residence" means, with respect to determining the home state of the insured, (A) the state where the insured resides for the greatest number of days during a calendar year; or (B) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(4) Affiliated Groups. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subparagraph (A) of paragraph (1) of this subdivision, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(f) "Home state insured" or "home state insured applicant" means a person whose home state is California and who has received a certificate or evidence of coverage as set forth in Section 1764 or a policy as issued by an eligible surplus line insurer, or a person who is an applicant therefor.

(g) "IID" means the International Insurers Department of the National Association of Insurance Commissioners.

(h) "Insurer" means, unless the context indicates otherwise, "nonadmitted" insurers that are either "foreign" or "alien" insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than

underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator. The term "insurer" includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 (commencing with Section 125) of Part 1), except insurers that are risk retention groups as defined by those acts.

(i) "ISI" means Insurance Solvency International.

(j) "Licensee" means a surplus line broker as defined in Section 47.

(k) "Multistate risk" means a risk covered by a nonadmitted insurer with insured exposures in more than one state.

(l) "NAIC" means the National Association of Insurance Commissioners or its successor organization.

(m) "Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus line broker with a nonadmitted insurer eligible to accept such insurance.

(n) "Nonadmitted insurer" means an insurer not licensed or admitted to engage in the business of insurance in this state in conformity with Section 700; but does not include a risk retention group, as that term is defined in Sections 130(k) and 2(a)(4) of the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901(a)(4)).

(o) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(1) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(2) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(3) The person has any of the following:

(A) A bachelor's degree or higher degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management and satisfies either of the following:

(i) Has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance.

(ii) Has one of the following:

(I) A designation as a Chartered Property and Casualty Underwriter (CPCU) issued by the American Institute for CPCU and Insurance Institute of America.

(II) A designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU and Insurance Institute of America:

(III) A designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education and Research.

(IV) A designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute.

(V) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management.

(B) At least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance, and has any one of the designations specified in subclauses (I) to (V), inclusive, of clause (ii) of subparagraph (A).

(C) At least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.

(D) A graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

(p) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(q) “Verified” means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under the penalty of perjury under California law, that the assertions made in the document are true.

SEC. 10. Section 1760.2 is added to the Insurance Code, to read:

1760.2. The surplus line broker shall be responsible for determining whether an applicant for nonadmitted insurance is a California home state insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through the producer, shall be deemed to be in compliance with this requirement.

SEC. 11. Section 1760.5 of the Insurance Code is amended to read:

1760.5. (a) The provisions of this chapter limiting the insurance that may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(1) Reinsurance of the liability of an admitted insurer.

(2) Insurance against perils of navigation, transit, or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise, and all other personal property and interests therein, in the course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks, and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(3) Aircraft or spacecraft insurance.

(4) Insurance on property or operations of railroads engaged in interstate commerce.

(b) The insurance specified in paragraphs (2), (3), and (4) of subdivision (a) may be placed with a nonadmitted insurer for a home state insured only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663 and 1665 for an insurance broker and only one fee shall be collected from one person for both licenses. The licensee in respect to the business shall be subject to all the provisions of this chapter except Sections 1761, 1763, 1765.1, 1765.2, and 1775.5.

(c) The commissioner may address to any licensed special lines' surplus line broker a written request for full and complete information respecting the financial stability, reputation, and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance specified in paragraph (2), (3), or (4) of subdivision (a). The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order in writing the licensee to place no further insurance business for home state insureds with that nonadmitted insurer on behalf of any person. Any placement with that nonadmitted insurer made by a licensee after receipt of the order is a violation of this chapter. The commissioner may issue an order if he or she finds that a nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance is in an unsound financial condition, is disreputable, or is lacking in integrity. The order shall also include notice of a hearing to be held at a time and place fixed therein, which shall be not less than 20 nor more than 30 days from service of the order upon the licensee.

(d) The commissioner may, in respect to business written or placed under the provisions of this section, require information and reports thereof that the commissioner considers necessary, convenient, or advisable.

(e) Each placing of insurance in violation of this chapter is a misdemeanor.

(f) The commissioner may revoke, suspend, or deny any license granted pursuant to this code in accordance with the procedure provided in Article 13 (commencing with Section 1737) of Chapter 5, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever the commissioner finds that the licensee or holder of the certificate has committed a violation of this section.

(g) The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon the broker based upon gross

premiums paid for insurance placed under authority conferred by the license.

(h) Special lines' surplus line brokers may advertise and solicit in conformity with Section 1773, except that they are not subject to the limitation that any nonadmitted insurer's name appearing in the advertisements or solicitations must be eligible under Section 1765.1.

SEC. 12. Section 1760.7 of the Insurance Code is amended to read:

1760.7. In addition to the authority granted by Section 1760.5, the commissioner has the discretion to direct special lines' surplus line brokers to not place further business for a home state insured with an insurer whose eligibility has been withdrawn pursuant to Section 1765.1.

SEC. 13. Section 1761 of the Insurance Code is amended to read:

1761. (a) Except as provided in Sections 1760 and 1760.5, and paragraphs (1) and (2) of subdivision (b), a person within this state shall not transact any insurance for a home state insured with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter.

(b) (1) An insurer domiciled in California may have common directors with an affiliated nonadmitted insurer provided these common directors do not constitute the majority of the voting authority of the nonadmitted insurer and do not perform any management functions for the nonadmitted insurer in California.

(2) An insurer domiciled in California may perform the following administrative services on behalf of an affiliated nonadmitted insurer that has qualified as an eligible surplus line insurer pursuant to Section 1765.1:

(A) Computer operations that are unrelated to the underwriting process, which may include such activities as development and maintenance of application software, databases, and servers, procurement of information technology and services, network operations, and Internet Web site development and support.

(B) Clerical and administrative staffing support, provided that this staff shall not have any contact or interaction with policyholders of the nonadmitted insurer.

(C) Human resources, provided that any decisions relating to the hiring, firing, disciplinary actions, or compensation of any employee, officer, or both, of the nonadmitted insurer shall be made directly by the nonadmitted insurer.

(D) Claims adjusting, as described in Section 14021, except that all claims notices, claims-related decisions, including those relating to setting reserves and claims acceptance, claim payments, and settlements shall be made directly by the affiliated nonadmitted insurer.

(E) Managing investments such as buying, maintaining, and selling financial investment instruments, except that decisions relating to investment goals, risk assumptions such as capital preservation and protection of investment principal, determining liquidity needs, and diversification ratios shall be made by the affiliated nonadmitted insurer.

(3) Nothing in this section permits the nonadmitted insurer to conduct any activity through its affiliate that constitutes the transaction of insurance or a violation of Section 700 or 703.

SEC. 14. Section 1763 of the Insurance Code is amended to read:

1763. (a) A surplus line broker may solicit and place insurance for a home state insured, other than as excepted in Section 1761, with nonadmitted insurers only if that insurance cannot be procured from insurers admitted for the particular class or classes of insurance and that actually write the particular type of insurance in this state. Each surplus line broker shall be responsible to ensure that a diligent search is made among insurers that are admitted to transact and are actually writing the particular type of insurance in this state before procuring the insurance for a home state insured from a nonadmitted insurer. Each surplus line broker shall file with the commissioner or his or her designee, within 60 days of placing any insurance for a home state insured with a nonadmitted insurer, a written report, that shall be kept confidential, regarding the insurance. This report shall include the name and address of the insured, verification that the insured is a home state insured, the identity of the insurer or insurers, a description of the subject and location of the risk, the amount of premium charged for the insurance, a copy of the declarations page of the policy or a copy of the surplus line broker's certificate or binder evidencing the placement of insurance, and other pertinent information that the



commissioner may reasonably require. In addition, each surplus line broker shall file a standardized form to be prescribed by the commissioner setting forth the diligent efforts to place the coverage with admitted insurers and the results of these efforts. The form shall be signed by a person licensed under this code who has made the diligent search required by this section or who supervised an unlicensed person or persons who actually conducted the search. The insurance shall not be placed with a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate that will be accepted by any admitted insurer except as provided by subdivision (c). The commissioner may make and publish reasonable rules and regulations, consistent with this chapter, in respect to transactions governed thereby and the basis or bases for his or her determinations hereunder.

(b) It shall be prima facie evidence that a diligent search among admitted insurers has been made if the standardized form filed as required by subdivision (a) establishes that three admitted insurers that actually write the particular type of insurance in this state have declined the risk, or that fewer than three admitted insurers actually write the particular type of insurance. The commissioner, or his or her designee, may review the form for the accuracy of the information provided on it, including, but not limited to, whether the listed insurers actually write that type of insurance, and whether the three insurers declined the risk. The commissioner may take disciplinary action against the person signing the form for any misrepresentation made in the form due to the negligence of or the result of an intentional act by that person or the person or persons who actually conducted the search. Those actions may include any action authorized to be taken against a licensed person by this code. Nothing in this subdivision shall preclude the commissioner or his or her designee from directing the surplus line broker to conduct a further or additional search among admitted insurers for similar placements in the future.

(c) It shall be conclusively presumed that insurance is placed in violation of this section if the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or the lowest premium that could be obtained from an admitted insurer unless, at the time the insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest

procurable rates from admitted insurers. The statement shall include an explanation of the reasons that the insurance must be placed with a nonadmitted insurer even though it is available from an admitted insurer. Unless the commissioner, or his or her designee, within five days after that filing notifies the filing broker that in his or her opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect that insurance. If within that five-day period the commissioner notifies the surplus line broker that the insurance is in violation of this section and orders the broker to effect termination of that insurance within 10 days from the notice, and the broker fails or refuses to effect that termination, that failure or refusal is a violation of this section.

(d) Statements filed under this section are not subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made public.

(e) For purposes of this section, “type of insurance” means the hazard or combination of hazards covered by a contract of insurance.

(f) Notwithstanding subdivision (a), this section shall not apply to insurance issued or delivered in this state to a home state insured by a nonadmitted Mexican insurer by and through a surplus line broker affording coverage exclusively in the Republic of Mexico on property located temporarily or permanently in, or operations conducted temporarily or permanently within, the Republic of Mexico.

(g) This section does not apply to the extension of coverage by a nonadmitted insurer, of or for the same risks, and to the same insured under an existing surplus lines policy. Such an extension may not exceed 90 days in the aggregate during any 12-month period. The extension may not include a change in coverage, terms, and conditions, or limits. Any additional premium charged for the extension shall be determined pro rata, based on the same rate of premium as the existing surplus lines policy.

(h) (1) The diligent search requirement set forth in subdivision (a) shall not apply to a commercial insured as defined in subdivision (b) of Section 1760.1 when both of the following occur:

(A) The surplus line broker procuring or placing the surplus line insurance has disclosed in writing to the commercial insured

that surplus insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight.

(B) The commercial insured has subsequently requested in writing that the surplus line broker procure or place surplus insurance from a nonadmitted insurer.

(2) The surplus line broker shall be responsible to ensure that the applicant is a commercial insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through a producer, shall be deemed to be in compliance with this requirement.

SEC. 15. Section 1763.1 of the Insurance Code is amended to read:

1763.1. (a) The commissioner may by order declare permissible for placement for a home state insured with a nonadmitted insurer and exempt from all requirements of Section 1763 except the filing of a confidential written report, any type of insurance coverage or risk for which he or she finds, after a public hearing, that there is not a reasonable or adequate market among admitted insurers. The commissioner or his or her designee shall maintain an export list showing all those exempt coverages and risks. A public hearing shall be held annually or more often at the commissioner's discretion and reasonable notice of a hearing shall be given to all interested parties including surplus line brokers, admitted insurers, trade associations representing admitted insurers, agents and brokers, and consumer groups. The hearing shall not be required to be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. Any such order by the commissioner shall continue in effect until terminated by the commissioner. Where the commissioner receives written comments or testimony or otherwise determines, prior to a hearing, that a type of insurance on the export list is more available, in the admitted market, the commissioner may remove the type of insurance from the list. The permissibility of any type of insurance to remain on the list is subject to an annual affirmative finding by the commissioner, however, when written comment or testimony is received prior to a hearing, the permissibility of that type of insurance to remain on the export list shall be reviewed at the next hearing and that type of insurance may not remain on the export list without an

affirmative decision by the commissioner or his or her designee that there is not a reasonable or adequate market among admitted insurers. The commissioner or his or her designee shall notify all surplus line brokers of any removal. For purposes of this section, the commissioner shall not be authorized to include on the export list as permissible for placement with a nonadmitted insurer, automobile or motor vehicle liability insurance, insurance on residential property, as defined under Section 10087, or any insurance written by the California FAIR plan.

(b) The surplus line advisory organization authorized by Chapter 6.1 (commencing with Section 1780.50) shall pay the costs for a maximum of two public hearings per year held by the commissioner or his or her designee pursuant to this section.

(c) Except for the removal of a type of insurance from the export list pursuant to subdivision (a), nothing in this section shall authorize the commissioner to declare any type of insurance impermissible for exportation.

SEC. 16. Section 1764 of the Insurance Code is amended to read:

1764. (a) A licensed surplus line broker may issue evidence of insurance for a home state insured, including binders, covernotes, and certificates evidencing the placement of insurance with an eligible nonadmitted insurer, and with prior written authority, may issue policies of the insurer.

(b) Certificates may be issued pursuant to subdivision (a) or (b) of Section 1764.2. The certificates shall be in the name of the surplus line broker and not in the name of the nonadmitted insurer, shall be signed by the surplus line broker, and shall contain all of the matters specified in Insurance Code Section 381.

(c) Policies may only be issued pursuant to subdivision (a) of Section 1764.2. The policies shall contain all of the matters specified in Section 381 and shall be countersigned by the surplus line broker.

SEC. 17. Section 1764.1 of the Insurance Code is amended to read:

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a home state insured pursuant to Section 1760, and surplus line broker, in the case of any insurance with a nonadmitted carrier for a home state insured to be transacted by the surplus line broker, shall be responsible to ensure that, at

the time of accepting an application for an insurance policy, other than a renewal of that policy, issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. In fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may rely, if it is reasonable under all the circumstances to do so, on the disclosure statement received from a licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

(2) In a case in which the applicant has not received and completed the signed disclosure form required by this section, he or she may cancel the insurance so placed. The cancellation shall be on a pro rata basis as to premium, and the applicant shall be entitled to the return of any broker's fees charged for the placement.

(b) The following notice shall be provided to home state insureds and home state insured applicants for insurance as provided by subdivision (a), and shall be printed in English and in the language principally used by the surplus line broker and nonadmitted insurer to advertise, solicit, or negotiate the sale and purchase of surplus line insurance. The surplus line broker and nonadmitted insurer shall use the appropriate bracketed language for application and issued policy disclosures:

“NOTICE:

1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING

ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED “NONADMITTED” OR “SURPLUS LINE” INSURERS.

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS.

3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. THE INSURER SHOULD BE LICENSED EITHER AS A FOREIGN INSURER IN ANOTHER STATE IN THE UNITED STATES OR AS A NON-UNITED STATES (ALIEN) INSURER. YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR “SURPLUS LINE” BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER\_\_\_\_. ASK WHETHER OR NOT THE INSURER IS LICENSED AS A FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND FOR ADDITIONAL INFORMATION ABOUT THE INSURER. YOU MAY ALSO CONTACT THE NAIC’S INTERNET WEB SITE AT [WWW.NAIC.ORG](http://WWW.NAIC.ORG).

5. FOREIGN INSURERS SHOULD BE LICENSED BY A STATE IN THE UNITED STATES AND YOU MAY CONTACT THAT STATE’S DEPARTMENT OF INSURANCE TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.

6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE OF THE UNITED STATES AND SHOULD BE ON THE NAIC’S INTERNATIONAL INSURERS DEPARTMENT (IID) LISTING OF APPROVED NONADMITTED NON-UNITED STATES INSURERS. ASK YOUR AGENT, BROKER, OR “SURPLUS LINE” BROKER TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.

7. CALIFORNIA MAINTAINS A LIST OF APPROVED SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST

AT THE INTERNET WEB SITE OF THE CALIFORNIA  
DEPARTMENT OF INSURANCE:  
WWW.INSURANCE.CA.GOV.

8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER'S FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU."

(c) When a contract is issued to an industrial insured, neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature. The producer shall ensure that the notice affixed to the confirmation of insurance, certificate of placement, or the policy is provided to the insured. The producer shall insert the current toll-free telephone number of the Department of Insurance as provided in paragraph 5 of the notice.

(1) An industrial insured is an insured:

(A) Which employs at least 25 employees on average during the prior 12 months; and

(B) Which has aggregate annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than twenty-five thousand dollars (\$25,000); or

(C) Which obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A "continuously retained insurance consultant" does not include: (i) an agent or broker through whom the insurance is being placed, (ii) a subagent or subproducer involved in the transaction, or (iii) an agent or broker that is a

business organization employing or contracting with a person mentioned in clauses (i) and (ii).

(2) The surplus line broker shall be responsible to ensure that the applicant is an industrial insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through the producer, shall be deemed to be in compliance with this requirement.

(d) For purposes of compliance with the requirement of subdivision (a) that the signature of the applicant be obtained, the following shall apply:

(1) If the insurance transaction is not conducted at an in-person, face-to-face meeting, the applicant's signature on the disclosure form may be transmitted by the applicant to the agent or broker via facsimile or comparable electronic transmittal.

(2) In the case of commercial lines coverage, or personal insurance coverage subject to Section 675 and any umbrella coverage associated therewith, where an applicant requires that insurance coverage be bound immediately, either because existing coverage will lapse within two business days of the time the insurance is bound or because the applicant is required to have coverage in place within two business days, and the applicant cannot meet in person with the agent or broker to sign the disclosure form, the agent or broker may obtain the signature of the applicant within five days of binding coverage, provided that the applicant may cancel the insurance so placed within five days of receiving the disclosure form from the agent or broker. The cancellation shall be on a pro rata basis, and the applicant shall be entitled to the rescission or return of any broker's fees charged for the placement. When a policy is canceled, the broker shall inform the applicant that the broker's fee must be returned and that the premium must be prorated.

(e) Notwithstanding subdivision (a), this section shall not apply to insurance issued or delivered in this state by a nonadmitted Mexican insurer by and through a surplus line broker affording coverage exclusively in the Republic of Mexico on property located temporarily or permanently in, or operations conducted temporarily or permanently within, the Republic of Mexico.

SEC. 18. Section 1764.2 of the Insurance Code is amended to read:



1764.2. No surplus line broker shall issue any evidence of insurance or cause or purport to cause any risk to be insured by a nonadmitted insurer or advise any home state insured or home state insured applicant for insurance that coverage has been or will be obtained from a nonadmitted insurer unless:

- (a) The broker has prior written authority from the nonadmitted insurer to cause the risk to be insured;
- (b) The broker has received advice in the ordinary course of business that the coverage has been obtained; or
- (c) A policy of insurance covering the insured for the risk has actually been issued by the nonadmitted insurer and delivered to the insured or his or her representative.

SEC. 19. Section 1764.3 of the Insurance Code is amended to read:

1764.3. If the surplus line broker acts in reliance on advice received in accordance with subdivision (b) of Section 1764.2, the broker shall deliver the policy to the home state insured or his or her representative, and, if the delivery is not made within 30 days after the date of the issuance of the certificate or upon which the risk has been bound or the home state insured or the home state insured applicant has been advised that coverage has been or will be obtained, he or she shall deliver to the insured either of the following:

- (a) A photostatic copy of evidence that the insurance has been bound.
- (b) If the nonadmitted insurer is located outside the United States, a cover note, placing slip, or similar document evidencing coverage issued or certified to by any broker located outside the United States who actually placed that insurance with the nonadmitted insurer.

SEC. 20. Section 1765.1 of the Insurance Code is amended to read:

1765.1. No surplus line broker shall place any coverage with a nonadmitted insurer for a home state insured unless the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at the time of placement, the nonadmitted insurer meets the requirements of either subdivision (a) or (b):

(a) If the insurer is domiciled in one of the states of the United States or its territories as defined in subdivision (o) of Section 1760.1:

(1) Is licensed to write the type of insurance in its domiciliary jurisdiction; and

(2) (A) Has capital and surplus that together total forty-five million dollars (\$45,000,000).

(B) The requirements of subparagraph (A) may be satisfied by an insurer possessing less than forty-five million dollars (\$45,000,000) upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The commissioner is prohibited from making an affirmative finding of acceptability when the foreign insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000); or

(C) If a foreign insurer that was listed as an eligible surplus line insurer as of January 1, 2011, and did not have the forty-five million dollars (\$45,000,000) of capital and surplus as of January 1, 2011, that insurer shall have at least thirty million dollars (\$30,000,000) of capital and surplus as of December 31, 2011, and at least forty-five million dollars (\$45,000,000) of capital and surplus as of December 31, 2013.

(b) If the insurer is not domiciled in one of the states of the United States or its territories as defined in subdivision (o) of Section 1760.1, the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC International Insurers Department (IID) and is licensed as an insurer in its domiciliary jurisdiction.

(c) The commissioner shall not recognize that a nonadmitted insurer is eligible pursuant to subdivision (a) or (b) unless and until the nonadmitted insurer, or a surplus line broker on its behalf, has submitted for filing the following:

(1) A certificate of capital and surplus issued by the insurer's domiciliary jurisdiction.

(2) A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from

either that jurisdiction or, if the jurisdiction does not issue those certificates, from any state where it is licensed.

(3) Information on the insurer's agent in California for service of process, including the agent's full name and address. The agent's address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) Notice, if applicable, that the insurer or licensee is currently known to be the subject of any order or proceeding regarding conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The notice shall identify the proceeding by date, jurisdiction, and relief or sanction sought, and shall attach a copy of the relevant order.

(6) A list of all California surplus line brokers authorized by the insurer to issue policies on its behalf, and any additions to or deletions from that list.

(7) Any additional information or documentation required by the commissioner that pertains to the requirements of this section or the NAIC review of the insurer including for purposes of inclusion on or exclusion from the list of authorized nonadmitted insurers maintained by the NAIC.

(d) The commissioner shall not recognize that a nonadmitted insurer is eligible pursuant to subdivision (a) or (b) unless and until the nonadmitted insurer, or a surplus line broker on its behalf, has established, in addition to the requirements prescribed in subdivision (c), that:

(1) All documents required by subdivision (c) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents confirm that the insurer holds a license to issue insurance policies, other than reinsurance, to residents of the jurisdiction that granted the license.

(4) The information available to the commissioner shall not indicate that the insurer offers to a home state insured products or rates that violate any provision of this code.

(e) If at any time the commissioner determines that an insurer is no longer eligible pursuant to subdivision (a) or (b), the commissioner may issue an order without prior notice and hearing. At the time an order is issued pursuant to this subdivision to an insurer, the commissioner shall notify all surplus line brokers of the order.

(f) The commissioner may require, at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained.

(g) The commissioner shall establish by regulation a schedule of fees to cover costs of administering and enforcing this chapter.

(h) (1) Insurance may be placed on a limited basis with insurers not eligible pursuant to this section if all of the following conditions are met:

(A) The use of multiple insurers is necessary to obtain coverage for 100 percent of the risk.

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that are eligible nonadmitted insurers.

(C) The placing surplus line broker submits to the commissioner, or his or her designee, copies of all documentation relied upon by the surplus line broker to make the broker's determination that the financial stability, reputation, and integrity of the ineligible insurer or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the ineligible insurer requested by the commissioner, shall be submitted no more than 30 days after the insurance is placed with the unlisted insurer for the initial placement by that broker with the particular ineligible insurer, and annually thereafter for as long as the broker continues to make placements with the ineligible insurer pursuant to this paragraph.

(D) The insured has aggregate annual premiums for all risks other than workers' compensation or health coverage totaling no less than one hundred thousand dollars (\$100,000).

(2) Insurance may not be placed pursuant to paragraph (1) if any of the following applies:

(A) The ineligible insurer has for any reason been objected to by the commissioner pursuant to this section or become ineligible.

(B) The insurance includes coverage for employer-sponsored medical, surgical, hospital, or other health or medical expense benefits payable to the employee by the insurer.

(C) The insurance is mandatory under the laws of the federal government, this state, or any political subdivision thereof, and includes any portion of limits of coverage mandated by those laws.

(D) The insured is a multiple employer welfare arrangement, as defined in Section 1002(40)(A) of Title 29 of the United States Code, or any other arrangement among two or more employers that are not under common ownership or control, which is established or maintained for the primary purpose of providing insurance benefits to the employees of two or more employers.

(E) Ineligible insurers represent a disproportionate portion of the lower layers of the coverage.

(3) Nothing in this section is intended to alter any duties of a surplus line broker pursuant to subdivision (b) of Section 1765 or other laws of this state to safeguard the interests of the insured under the policy in recommending or placing insurance with a nonadmitted insurer.

(4) Placements authorized by this subdivision are intended to provide sophisticated insurance purchasers with a means to obtain necessary commercial insurance coverage from nonadmitted insurers that are not eligible in situations where it is not commercially possible to fully obtain that coverage from either admitted or eligible insurers. This subdivision shall not be deemed to permit surplus line brokers to place with nonadmitted insurers common commercial or personal line coverages for insureds that can be placed with insurers that are admitted or eligible pursuant to this section, whether the insured is an individual insured, or a group created primarily for the purpose of purchasing insurance.

(i) With respect to a nonadmitted insurer that is listed as an eligible surplus line insurer as of July 21, 2011, pursuant to the former Section 1765.1 as it read prior to July 21, 2011, this section shall not be effective until the subsequent expiration of the policies of that insurer in effect on July 21, 2011. Nothing in the bill that amended this section during the 2011 portion of the 2011–12 Regular Session is intended to repeal or imply there is not authority to adopt, or to have adopted, or to continue in force, any regulation, or part thereof, with respect to surplus line insurance which is not clearly inconsistent with it.

SEC. 21. Section 1765.2 of the Insurance Code is amended to read:

1765.2. A surplus line broker may place any coverage with a California approved nonadmitted insurer if the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, if at the time of placement, the nonadmitted insurer meets the following requirements:

(a) (1) Has established its financial stability, reputation, and integrity, for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the commissioner through a surplus line broker.

(2) Meets one of the following requirements with respect to its financial stability:

(A) Has capital and surplus that together total at least forty-five million dollars (\$45,000,000). “Capital” shall be as defined in Section 36. “Surplus” shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least twenty-five million dollars (\$25,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States’ national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term “same character and quality” shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners’ Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow

any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Letters of credit will not qualify as assets in the calculation of surplus. If capital and surplus together total less than forty-five million dollars (\$45,000,000), the commissioner has affirmatively found that the capital and surplus is adequate to protect California policyholders. The commissioner shall consider, on determining whether to make this finding, factors such as quality of management, the capital and surplus of any parent company, the underwriting profit and investment income trends, and the record of claims payment and claims handling practices of the nonadmitted insurer.

(B) In the case of an “Insurance Exchange” created and authorized under the laws of individual states, maintains capital and surplus of not less than fifty million dollars (\$50,000,000) in the aggregate. “Capital” shall be as defined in Section 36. “Surplus” shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least twenty-five million dollars (\$25,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States’ national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term “same character and quality” shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners’ Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the

insurer or to policyholders. Letters of credit shall not qualify as assets in the calculation of surplus. Each individual syndicate seeking to accept surplus line placements of risks resident, located, or to be performed in this state shall maintain minimum capital and surplus of not less than six million four hundred thousand dollars (\$6,400,000). Each individual syndicate shall increase the capital and surplus required by this paragraph by one million dollars (\$1,000,000) each year until it attains a capital and surplus of forty-five million dollars (\$45,000,000).

(C) In the case of a syndicate that is part of a group consisting of incorporated individual insurers, or a combination of both incorporated and unincorporated insurers, that at all times maintains a trust fund of not less than one hundred million dollars (\$100,000,000) in a qualified United States financial institution as security to the full amount thereof for the United States surplus line policyholders and beneficiaries of direct policies of the group, including all policyholders and beneficiaries of direct policies of the syndicate, and the full balance in the trust fund is available to satisfy the liabilities of each member of the group of those syndicates, incorporated individual insurers or other unincorporated insurers, without regard to their individual contributions to that trust fund, and the trust complies with the terms of and conditions specified in paragraph (1) of subdivision (b), the syndicate is excepted from the capital and surplus requirements of subparagraph (A). The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(b) (1) In addition, to be approved as a surplus line insurer, an insurer not domiciled in one of the United States or its territories shall have in force in the United States an irrevocable trust account in a qualified United States financial institution, for the protection of United States policyholders, of not less than five million four hundred thousand dollars (\$5,400,000) and consisting of cash, securities acceptable to the commissioner which are authorized pursuant to Sections 1170 to 1182, inclusive, readily marketable securities acceptable to the commissioner that are listed on a regulated United States national or principal regional security exchange, or clean and irrevocable letters of credit acceptable to



the commissioner and issued by a qualified United States financial institution. The trust agreement shall be in a form acceptable to the commissioner. The funds in the trust account may be included in any calculation of capital and surplus, except letters of credit, which shall not be included in any calculation.

(2) In the case of a syndicate seeking approval under subparagraph (C) of paragraph (2) of subdivision (a), the syndicate shall, in addition to the requirements of that subparagraph, at a minimum, maintain in the United States a trust account in an amount satisfactory to the commissioner that is not less than the amount required by the domiciliary state of the syndicate's trust. The trust account shall comply with the terms and conditions specified in paragraph (1).

(3) In the case of a group of incorporated insurers under common administration that maintains a trust fund of not less than one hundred million dollars (\$100,000,000) in a qualified United States financial institution for the payment of claims of its United States policyholders, their assigns, or successors in interest and that complies with the terms and conditions of paragraph (1) that has continuously transacted an insurance business outside the United States for at least three years, that is in good standing with its domiciliary regulator, whose individual insurer members maintain standards and a financial condition reasonably comparable to admitted insurers, that submits to this state's authority to examine its books and bears the expense of examination, and that has an aggregate policyholder surplus of ten billion dollars (\$10,000,000,000), the group is excepted from the capital and surplus requirements of subdivision (a).

(c) Unless available from the NAIC or other public source, has caused to be provided to the commissioner the following documents:

(1) The financial documents as specified below, each showing the insurer's condition as of a date not more than 12 months prior to submission:

(A) A copy of an annual statement, prepared in the form prescribed by the NAIC. For an alien insurer, in lieu of an annual statement, a licensee may submit a form as set forth by regulation and as prepared by the insurer, and, if listed by the IID, a copy of the complete information as required in the application for listing by the IID.

(B) A copy of an audited financial report on the insurer's condition that meets the standards of subparagraph (D) for foreign insurers or subparagraph (E) for alien insurers.

(C) If the insurer is an alien:

(i) A certified copy of the trust agreement referenced in subdivision (b).

(ii) A verified copy of the most recent quarterly statement or list of the assets in the trust.

(D) Financial reports filed pursuant to this section by foreign insurers shall conform to the following standards:

(i) Financial documents shall be certified.

(ii) An audited financial report shall constitute a supplement to the insurer's annual statement, as required by the annual statement instructions issued by the NAIC.

(iii) An audited financial report shall be prepared by an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states where licensed to practice; and be prepared in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulator of the insurer's domiciliary jurisdiction.

(iv) An audited financial report shall include information on the insurer's financial position as of the end of the most recent calendar year, and the results of its operations, cashflows, and changes in capital and surplus for the year then ended.

(v) An audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with its domiciliary jurisdiction, and presenting comparatively the amounts as of December 31 of the most recent calendar year and the amounts as of December 31 of the preceding year.

(E) Financial reports filed pursuant to this section by alien insurers shall conform to the following standards:

(i) Except as provided in clause (ii) of subparagraph (C), financial documents should be certified; if certification of a financial document is not available, the document shall be verified.

(ii) Financial documents should be expressed in United States dollars, but may be expressed in another currency, if the exchange rate for the other currency as of the date of the document is also provided.

(iii) The responses provided pursuant to subparagraph (A) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent Insurance Solvency International Guide to Alien Reporting Format, “Standard Definitions of Accounting Items.” Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent licensed auditor in the insurer’s domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted Accounting Principles, or (II) International Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants, and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, any certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The supplement must meet the same requirements which apply to the supplemented document, and must update the outdated document to a date within the prescribed time period, preferably to the same date as the nonsupplemented document.

(2) A certified copy of the insurer’s license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either that jurisdiction or, if the jurisdiction does not issue those certificates, from any state where it is licensed.

(3) Information on the insurer’s agent in California for service of process, including the agent’s full name and address. The agent’s address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) A certified or verified explanation, report, or other statement from the insurance regulatory office or official of the insurer's domiciliary jurisdiction concerning the insurer's record regarding market conduct and consumer complaints, or, if that information cannot be obtained from that jurisdiction, then any other information that the licensee can procure to demonstrate a good reputation for payment of claims and treatment of policyholders.

(6) A verified statement, from the insurer or licensee, on whether the insurer or any affiliated entity is currently known to be the subject of any order or proceeding regarding conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The statement shall identify the proceeding by date, jurisdiction, and relief or sanction sought, and shall attach a copy of the relevant order.

(7) A certified copy of the most recent report of examination or an explanation if the report is not available.

(8) A list of all California surplus line brokers authorized by the insurer to issue policies on its behalf, and any additions to or deletions from that list.

(d) (1) Has provided any additional information or documentation required by the commissioner that is relevant to the financial stability, reputation, and integrity of the nonadmitted insurer. In making a determination concerning financial stability, reputation, and integrity of the nonadmitted insurer, the commissioner shall consider any analyses, findings, or conclusions made by the NAIC in its review of the insurer for purposes of inclusion on or exclusion from the list of authorized nonadmitted insurers maintained by the NAIC. The commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of the NAIC, as the commissioner deems appropriate. In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of any state, as the commissioner deems appropriate, as long as

that state, in its method of regulation and review, meets the requirements of paragraph (2).

(2) The regulatory body of the state shall regularly receive and review the following: (A) an audited financial statement of the syndicate, prepared by a certified or chartered public accountant; (B) an opinion of a qualified actuary with regard to the syndicate's aggregate reserves for payment of losses or claims and payment of expenses of adjustment or settlement of losses or claims; (C) a certification from the qualified United States financial institution that acts as the syndicate's trustee, respecting the existence and value of the syndicate's trust fund; and (D) information concerning the syndicate's or its manager's operating history, business plan, ownership and control, experience and ability, together with any other pertinent factors, and any information indicating that the syndicate or its manager make reasonably prompt payment of claims in this state or elsewhere. The regulatory body of the state shall have the authority, either by law or through the operation of a valid and enforceable agreement, to review the syndicate's assets and liabilities and audit the syndicate's trust account, and shall exercise that authority with a frequency and in a manner satisfactory to the commissioner.

(e) Has established that:

(1) All documents required by subdivisions (c) and (d) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents affirm that the insurer has actively transacted insurance for the three years immediately preceding the filing made under this section, unless an exemption is granted. As used in this paragraph, "insurer" does not include a syndicate of underwriting entities. The commissioner may grant an exemption if the licensee has applied for exemption and demonstrates either of the following:

(A) The insurer meets the condition for any exception set forth in subdivision (a), (b), or (c) of Section 716.

(B) If the insurer has been actively transacting insurance for at least 12 months, and the licensee demonstrates that the exemption is warranted because the insurer's current financial strength, operating history, business plan, ownership and control, management experience, and ability, together with any other pertinent factors, make three years of active insurance transaction unnecessary to establish sufficient reputation.

(4) The documents confirm that the insurer holds a license to issue insurance policies, other than reinsurance, to residents of the jurisdiction that granted the license unless an exemption is granted. The commissioner may grant an exemption if the licensee has applied for an exemption and demonstrates that the exemption is warranted because the insurer proposes to issue in California only commercial coverage, and is wholly owned and actually controlled by substantial and knowledgeable business enterprises that are its policyholders and that effectively govern the insurer's destiny in furtherance of their own business objectives.

(5) The information filed pursuant to paragraph (5) of subdivision (c) or otherwise filed with or available to the commissioner, including reports received from California policyholders, shall indicate that the insurer makes reasonably prompt payment of claims in this state or elsewhere.

(6) The information available to the commissioner shall not indicate that the insurer offers in California a licensee products or rates that violate any provision of this code.

(f) Has been placed on the list of approved surplus line insurers by the commissioner. The commissioner shall establish a list of all surplus line insurers that have met the requirements of subdivisions (a) to (e), inclusive, and shall publish a master list at least semiannually. Any insurer receiving approval as an approved surplus line insurer shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. If an insurer appears on the most recent list, it shall be presumed that the insurer is an approved surplus line insurer, unless the commissioner or his or her designee has mailed or causes to be mailed notice to all surplus line brokers that the commissioner has withdrawn the insurer's approval. Upon receipt of notice, the surplus line broker shall no longer advertise that the insurer is approved. Nothing in this subdivision shall limit the commissioner's discretion to withdraw an insurer's approval.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that any insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the approval requirements under subdivisions (a) to (e), inclusive, (C) has violated the laws of this state, or (D) without justification, or with a frequency so as to indicate a general business practice, delays the payment of just claims, the commissioner may issue an order removing the insurer from the list. Notice of hearing shall be served upon the insurer or its agent for service of process stating the time and place of the hearing and the conduct, condition, or ground upon which the commissioner would make his or her order. The hearing shall occur not less than 20 days, nor more than 30 days, after notice is served upon the insurer or its agent for service of process.

(2) If the commissioner determines that an insurer's immediate removal from the list is necessary to protect the public or a home state insured or home state insured applicant of the insurer, or, in the case of an application by an insurer to be placed on the list which is being denied by the commissioner, the commissioner may issue an order pursuant to paragraph (1) without prior notice and hearing. At the time an order is served pursuant to this paragraph to an insurer on the list, the commissioner shall also issue and serve upon the insurer a statement of the reasons that immediate removal is necessary. Any order issued pursuant to this paragraph shall include a notice stating the time and place of a hearing on the order, which shall be not less than 20 days, nor more than 30 days, after the notice is served.

(3) Notwithstanding paragraphs (1) and (2), in any case where the commissioner is basing a decision to remove an insurer from the list, or deny an application to be placed on the list, on the failure of the insurer or applicant to comply with, meet, or maintain any of the objective criteria established by this section, or by regulation adopted pursuant to this section, the commissioner may so specify this fact in the order, and no hearing shall be required to be held on the order.

(4) Notwithstanding paragraphs (1) and (2), the commissioner may, without prior notice or hearing, remove from the list established pursuant to subdivision (f) any insurer that has failed or refused to timely provide documents required by this section,

or any regulations adopted to implement this section. In the case of removal pursuant to this paragraph, the commissioner shall notify all surplus line brokers of the action.

(h) In addition to any other statements or reports required by this chapter, the commissioner may also address to any licensee a written request for full and complete information respecting the financial stability, reputation, and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance business with a home state insured. The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, advise the licensee in writing that the insurer does not qualify as an approved insurer. Any placement in the nonadmitted insurer made by a licensee after receipt of that advisement shall be accompanied by a copy of the advisement. The commissioner may issue an advisement when documents submitted pursuant to subdivisions (c) and (d) do not meet the criteria of subdivisions (a) to (e) inclusive, or when the commissioner obtains documents on an insurer and the insurer does not meet the criteria of subdivisions (a) to (e), inclusive, and shall be authorized to not include or remove that insurer from the List of Approved Surplus Line Insurers.

(i) The commissioner shall require, at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained.

(j) The commissioner shall establish by regulation a schedule of fees to cover costs of administering and enforcing this chapter.

SEC. 22. Section 1765.3 of the Insurance Code is amended to read:

1765.3. (a) A license under this chapter may be issued to an individual or any legal business entity. If issued to a business entity or individual that maintains more than one surplus line office from which it transacts that business with California residents, it shall name the natural person or persons located at each such surplus line office maintained by the licensee who is or are responsible for the proper discharge at each office of all duties placed upon



the licensee acting as a surplus line broker and each of these natural persons are required to be licensed as a surplus line broker. Each natural person shall meet all of the requirements for the license.

(b) Every application for a license filed by a corporation shall contain the names and addresses of all stockholders owning 10 percent or more of the corporation's stock, and of all officers and directors of the corporation. Every licensed corporation shall file a written notice with the commissioner of all changes, except address changes, of its stockholders who own 10 percent or more of the corporation's stock and of all officers and directors of the corporation.

SEC. 23. Section 1765.4 of the Insurance Code is amended to read:

1765.4. Any natural person applying for a license to act as a surplus line broker shall prove his or her competency by showing he or she holds an existing license to act as a property broker-agent or casualty broker-agent, which requires passing the qualifying examination for such an insurance broker's license.

SEC. 24. Section 1765.5 is added to the Insurance Code, to read:

1765.5. If an applicant for any license under this chapter, within one year from the date of the receipt by the commissioner of the application, whether or not the filing is complete, neither fully qualifies for and receives that license on a permanent basis, nor is denied its issue, such application is automatically denied without prejudice to the filing of a new application for the license.

SEC. 25. Section 1766 of the Insurance Code is amended to read:

1766. A payment of premium to a surplus line broker acting for a person other than himself or herself in negotiating, continuing, or renewing any policy of insurance under this chapter shall be deemed to be payment to the insurer, notwithstanding any conditions or stipulations in the policy or contract. Nothing in this section shall be deemed to relieve a surplus line broker or special lines' surplus line broker of any obligation owed to a home state insured or home state insured applicant.

SEC. 26. Section 1768 of the Insurance Code is amended to read:

1768. A resident surplus line broker shall keep in this state complete records of the business transacted by him or her for

California home state insureds with nonadmitted insurers under his or her license as a surplus line broker including the following documentation for each policy: (a) verification that the insured is a California home state insured; (b) verification that the commercial insured or industrial insured qualifies for the provisions of this code; (c) whether or not it is a single state policy or multistate policy; and (d) where allocation of premium to the states is required, data as necessary to make that allocation. A nonresident surplus line broker shall keep in the state where he or she is licensed as a resident surplus line broker complete records of the business transacted by him or her for California home state insureds with nonadmitted insurers under his or her California nonresident surplus line broker license, including subdivisions (a) to (d), inclusive. The commissioner may waive or modify any of the forgoing requirements by issuance of a notice published on the department's Internet Web site.

SEC. 27. Section 1774 of the Insurance Code is amended to read:

1774. (a) (1) On or before the first day of March of each year, the surplus line broker, placing business for a home state insured, shall file with the commissioner a sworn statement of all business transacted under his or her surplus line license during the last preceding calendar year. The statement shall contain an account of the business done by the surplus line broker placing business for a home state insured for the prior year, and shall include (A) the total amount of gross premium; (B) the total gross premium for single state risks where 100 percent of the premium is attributable to risks in California; and (C) for multistate risks, the percentage of gross premium allocated to California and each other state. The commissioner may waive or modify any of the forgoing requirements by issuance of a notice published on the department's Internet Web site.

(2) On or before the first day of March of each year, the home state insured that directly procures insurance pursuant to Section 1760 shall file with the commissioner a sworn statement of all business done during the last preceding calendar year. That statement shall contain an account of the insurance directly procured by the home state insured pursuant to Section 1760 for the prior year, and shall include (A) the total amount of premium; (B) the total premium for single state risks where 100 percent of

the premium is attributable to risks in California; and (C) for multistate risks, the percentage of premium allocated to California and each other state. The commissioner may waive or modify any of the forgoing requirements by issuance of a notice published on the department's Internet Web site.

(b) For purposes of this chapter, "business done" or "business transacted" means all insurance business conducted by the surplus line broker for a home state insured or directly procured by the home state insured. If two or more persons licensed as surplus line brokers are involved in placing a policy, only the one who is responsible for negotiating, effecting the placement, and remitting the premium to the nonadmitted insurer or its representatives, shall be considered transacting business.

(c) The date on which the surplus line broker transacting a policy prepares a bill or invoice for payment of all or part of the premiums due, shall be considered the date on which that business was done or transacted, subject to paragraph (d). This date shall be shown on the face of the bill or invoice and shall be referred to as the "invoice date."

(d) (1) The invoice date shall be no more than 60 days after the policy effective date and no more than 60 days after the insurance was placed with a nonadmitted insurer, except as provided in paragraph (2) of this section.

(2) For purposes of this chapter, the amount of gross premium to be reported, if premiums are billed and payable in installments, shall be the amount of the installment premium, provided the amount and due date of each installment, or the basis for determining each installment, is identifiable in the policy or an endorsement, and either of the following conditions is satisfied:

(A) Installments under the policy are not billed more frequently than once per month.

(B) If more than one installment is billed in any month, the commissioner determines, in his or her discretion, that the installment billing method used does not unduly burden the commissioner's ability to accurately determine the amount of premium paid by the insured.

(3) If a new or renewal policy has an effective date between January 1, 2011, to July 20, 2011, inclusive, and is placed on or before July 20, 2011, then the policy shall be considered to be business done by the surplus line broker as of the effective date.

If a new or renewal policy has an effective date between January 1, 2011, to July 20, 2011, inclusive, then the policy shall be considered to be business done by the home state insured who directly procures policies as of the effective date. Cancellations or endorsements shall be business done on the same date as the policy that is being cancelled or endorsed, if that policy effective date is on or before July 20, 2011. Installment premiums, as referenced in paragraph (2), shall be business done on the date of the most recent invoice issued on or before July 20, 2011, that included premium tax charges. This paragraph is enacted to address the July 21, 2011, effective date of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Public Law 111-203), and shall remain in effect only until October 18, 2012.

SEC. 28. Section 1775.4 of the Insurance Code is amended to read:

1775.4. (a) The amount of the payment shall be 3 percent of the gross premiums charged less return premiums upon business done by the surplus line broker during the calendar month ending two calendar months immediately preceding the due date of the payment, as specified in Section 1775.3, excluding gross premiums and return premiums paid by him or her upon business governed by the provisions of Section 1760.5. If during any calendar month those return premiums upon business done by a surplus line broker exceed the gross premiums upon the business done by him or her in that calendar month, then no payment shall be payable by him or her in respect to that calendar month, and he or she may carry forward that excess to the next succeeding calendar month or months and apply it in reduction of the taxable premiums on business done by him or her in that succeeding calendar month or months. Even though no payment shall be payable by the broker, he or she shall file a return showing that his or her return premiums exceeded his or her gross premiums.

(b) In determining the applicability of subdivision (a) of Section 1775.1 to a surplus line broker who has acquired the business of another surplus line broker, the amount of tax liability of the acquired broker for the immediately preceding calendar year shall be added to the amount of the tax liability of the acquiring broker for the immediately preceding calendar year.

(c) All amounts paid, other than penalties and interest, shall be allowed as a credit on the annual tax imposed by Section 1775.5.

(d) If the total amount of monthly installment payments for any calendar year exceeds the amount of annual tax for that year, the excess shall be treated as an overpayment of annual tax and be allowed as a credit or refund.

(e) A penalty of 10 percent of the amount of the monthly payment due shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required, plus interest at the rate of 1 percent per calendar month or fraction thereof from the due date of the payment until the date payment is received by the commissioner, but not for any period after the due date of the annual tax. The penalty and interest shall be applied as prescribed in Section 12636.5 of the Revenue and Taxation Code. The commissioner may remit the penalty in a case where he or she finds, as a result of examination or otherwise, that the failure of, or delay in, payment arose out of excusable mistake or excusable inadvertence.

(f) For any part of a payment required that was not made within the time required by law, when the nonpayment or late payment was due to fraud on the part of the taxpayer, a penalty of 25 percent of the amount unpaid shall be added thereto, in addition to all other penalties otherwise imposed.

(g) The commissioner, upon a showing of good cause, may extend for not to exceed 10 days the time for making a monthly payment. The extension may be granted at any time, provided that a request therefor is filed with the commissioner within or prior to the period for which the extension may be granted. Any surplus line broker to whom an extension is granted shall, in addition to the monthly payment, pay interest at the rate of 1 percent per month, or fraction thereof, from the due date until the annual tax due date.

SEC. 29. Section 1775.5 of the Insurance Code is amended to read:

1775.5. (a) Every surplus line broker shall annually, on or before the first day of March of each year, pay to the Insurance Commissioner for the use of the State of California a tax of 3 percent of the gross premiums charged less return premiums upon business done by him or her under authority of his or her license during the preceding calendar year, excluding any portions of premiums upon business done involving the risk finance portion of any blended finite risk product used in the financing element

of state or federal Superfund environmental settlements involving remediation of soil or groundwater contamination or by the provisions of Section 1760.5. If during any calendar year 3 percent of the return premiums upon business done by a surplus line broker exceed 3 percent of the gross premiums upon that business done by him or her in that year, then he or she may either carry forward that excess to the next succeeding year and apply it as a credit against 3 percent of gross premiums on the business done by him or her in the succeeding year, or he or she may elect to receive, and thereupon be paid a refund equal to the amount of taxes theretofore paid by him or her on that excess of return premiums paid over gross premiums received.

(b) For the purpose of determining that tax, the total premium charged for all that nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be the entire premium charged on all nonadmitted insurance for the California home state insured. This provision shall not apply to interstate motor transit operations conducted between this and other states. With respect to those operations surplus line tax shall be payable on the entire premium charged on all nonadmitted insurance, less the following:

(1) The portion of the premium as is determined, as herein provided, to have been charged for operations in other states taxing the premium on operations in those states of an insured maintaining its headquarters office in this state.

(2) The premium for any operations outside of this state of an insured who maintains a headquarters operating office outside of this state and a branch office in this state.

(c) A penalty of 10 percent of the amount of the payment due pursuant to this section shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required, plus interest at the rate of 1 percent per calendar month or fraction thereof, from March 1, the due date of the annual tax, until the date the payment is received by the commissioner. The penalty and interest shall be applied as prescribed in Section 12636.5 of the Revenue and Taxation Code. The commissioner, upon a showing of good cause, may extend for a period not to exceed 30 days, the time for filing a tax return or paying any amount required to be paid with the return. The extension may be granted at any time, provided that a request therefor is filed with

the commissioner within, or prior to, the period for which the extension may be granted.

Any surplus line broker to whom an extension is granted shall, in addition to the tax, pay interest at the rate of 1 percent per month or fraction thereof from March 1, until the date of payment. The commissioner may remit the penalty in a case where the commissioner finds, as a result of examination or otherwise, that the failure of or delay in payment arose out of excusable mistake or excusable inadvertence.

(d) For any part of a payment required by this section or by Section 1775.4 which was not made within the time required by law, when the nonpayment or late payment was due to fraud on the part of the broker, a penalty of 25 percent of the amount unpaid shall be added thereto, in addition to all other penalties otherwise imposed.

(e) For the purposes of this section these terms shall have the following meanings:

(1) “Blended finite risk product” means a contractual arrangement combining risk finance with traditional risk transfer, where a distinct portion of the program cost represents the funding of a known, existing, nonfortuitous future cost, obligation, responsibility, or liability at its discounted net present value, and another portion of the program cost represents risk transfer for losses that have yet to occur related to the cost, obligation, responsibility, or liability that is the subject of the program.

(2) “Risk financing” means that portion of any blended finite risk product that represents the funding of a known, existing, nonfortuitous future cost, obligation, responsibility, or liability.

(3) “Risk finance” or “financing element” means a method of funding for a known future cost over a long time horizon in current-value dollars using the principle of net present value discounting.

SEC. 30. Section 1779 of the Insurance Code is amended to read:

1779. Every California home state insured for whom insurance has been effected with nonadmitted insurers shall, upon request in writing by the commissioner, produce for the commissioner’s examination all policies, contracts, and other documents evidencing that insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for that insurance.

For refusal to obey that request, the insured shall forfeit to the State of California the sum of one thousand dollars (\$1,000) for each refusal.

SEC. 31. Section 1780.56 of the Insurance Code is amended to read:

1780.56. (a) The commissioner may delegate one or more of the following duties to a qualified surplus line advisory organization under this chapter:

(1) To receive, review, and record all documents required by law, regulation, or order to be filed with the commissioner or his or her designee with respect to foreign and alien nonadmitted insurers and any insurance placed with nonadmitted insurers, except that the advisory organization shall not receive documents submitted pursuant to subdivision (c) of Section 1763. The review under this subdivision shall be for completeness, accuracy, and any other matters the commissioner reasonably may direct the advisory organization to review. The advisory organization shall notify the filing surplus line broker in writing of any filing that the advisory organization determines to be incomplete or inaccurate, and shall request the filing broker to correct the problem. The advisory organization may, or as directed by the commissioner shall, notify the commissioner of incomplete or inaccurate filings.

(2) To conduct a security review and analysis as directed by the commissioner, and to provide to the commissioner, and if directed by the commissioner, to the NAIC, a report on any nonadmitted insurer based on that review and analysis. The review and analysis under this subdivision shall take account of any matters the commissioner reasonably may direct the advisory organization to review and any other matters the advisory organization considers necessary or appropriate.

(3) To make confidential recommendations to the commissioner and, if directed by the commissioner, to the NAIC, as to the suitability of any foreign or alien nonadmitted insurer to insure property or risks located or persons residing in this state or whether any foreign or alien nonadmitted insurer should be eligible or ineligible or approved pursuant to Section 1765.2. The advisory organization's recommendations shall be based on any review and analysis that it performs under this chapter and on any additional information that may come to the advisory organization's attention



or that the commissioner reasonably may request the advisory organization to consider.

(4) To report to the commissioner and other appropriate authorities instances of actual fraudulent or illegal insurance activity in the surplus line market that come to the advisory organization's attention and any facts that come to the advisory organization's attention that, in the reasonable judgment of the advisory organization, may indicate the presence of fraudulent or illegal insurance activity in the surplus line market or potential risk of harm to consumers of surplus line insurance.

(5) To maintain and report information necessary or that reasonably may be requested by the commissioner for the calculation and collection of premium taxes on surplus line insurance premiums.

(6) To respond to any request by the commissioner for comments on any proposed legislation or regulation affecting the placement of insurance pursuant to the surplus line law.

(7) To receive and disseminate to its members information relating to surplus line insurance, to educate its members about the surplus line law and the regulations pertaining thereto, and to perform any specific educational activities that the commissioner reasonably may request.

(8) To communicate with organizations of admitted insurers with respect to the proper use of the surplus line market.

(9) To enter into written arrangements with the commissioner whereby the advisory organization will perform any other functions that, in the judgment of the commissioner and the advisory organization, will help the commissioner provide effective and cost-efficient supervision of the surplus line market.

(b) If the commissioner delegates to the advisory organization one or more of the duties set forth in subdivision (a), the advisory organization also shall be authorized to assess a stamping fee for each policy, declarations page, cover note, or other premium bearing document submitted to the advisory organization. The stamping fee shall be established from time to time by the governing body of the advisory organization, shall reflect all reasonable costs associated with the services provided by the advisory organization, and may be reviewed by the commissioner for reasonableness as part of the commissioner's examination of the advisory organization. Except as otherwise provided in this

subdivision, the stamping fee may not exceed three-fourths of 1 percent of the premium for the insurance. Any proposed increase in the stamping fee above three-fourths of 1 percent shall be filed with the commissioner along with a written explanation of the reason for the increase, and the increase shall take effect upon the expiration of 60 days after the date of filing unless the commissioner disapproves it within that time. Within 60 days after the date of filing, the commissioner may provisionally approve the proposed increase, in which event the increase shall take effect immediately. The proposed increase shall be deemed fully approved upon the expiration of 120 days after the date of filing unless the commissioner disapproves the proposed increase within that time. The stamping fee shall be paid by the surplus line broker, provided, however, that the surplus line broker shall be allowed to receive and collect the stamping fee from the insured.

(c) Nothing in this chapter shall affect any delegation by the commissioner pursuant to the surplus line law, provided, however, that once the commissioner delegates one or more of the duties set forth in this section and the advisory organization commences operations under this chapter, no other organization may simultaneously perform the same duties under this chapter or exercise the authority incidental thereto.

(d) The advisory organization may cease performing the duties delegated by the commissioner under this chapter and exercising the authority incidental thereto at any time upon 180 days' written notice to the commissioner. The commissioner may require the advisory organization to continue performing the duties under this chapter for up to an additional 180 days, and the commissioner shall be entitled, following receipt of notice from the advisory organization under this subdivision, to obtain copies of all unprivileged files, documents, and records maintained by the advisory organization on behalf of the commissioner under this chapter.

(e) The commissioner's findings, determinations, rules, rulings, and orders under this chapter shall apply only to the advisory organization's right to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto. Nothing in this chapter shall be deemed or construed to affect the advisory organization's right to exist and function as a private, nonprofit organization, with all powers

attendant thereto, and to engage in lawful activities other than under the authority of this chapter.

SEC. 32. Section 13210 of the Revenue and Taxation Code is amended to read:

13210. (a) For gross premiums paid or to be paid on insurance contracts that take effect or are renewed on or after January 1, 1994, every California home state insured as defined by subdivision (f) of Section 1760.1 of the Insurance Code, who effects insurance governed by Chapter 6 (commencing with Section 1760) of Part 2 of Division 1 of the Insurance Code shall pay a gross premium tax of 3 percent charged for the use of the state, less 3 percent of returned premiums that were subject to the tax received by reason of cancellation or reduction of premium.

(1) This section shall not apply to any of the following:

(A) Insurance coverage for which a tax on the gross premium is due or has been paid pursuant to Section 1775.5 of the Insurance Code.

(B) Gross premiums paid and returned premiums received by that California home state insured as defined by subdivision (f) of Section 1760.1 of the Insurance Code, upon business governed by the provisions of Section 1760.5 of the Insurance Code.

(C) Insurance coverage for which a tax on the gross premium is due or has been paid pursuant to Section 132 of the Insurance Code.

(2) If during any calendar quarter 3 percent of the returned premiums received that were subject to the tax imposed by this part exceed 3 percent of the gross premiums paid or to be paid by that person on contracts that took effect or were renewed in that calendar quarter, then that person may either carry forward the excess to a succeeding calendar quarter and apply it as a credit against the 3 percent of gross premiums paid or to be paid by that person in the succeeding calendar quarter, or the person may elect to receive, and be paid a refund equal to the amount of taxes paid by the person on the excess of returned premiums received over gross premiums paid or to be paid.

(b) For purposes of determining the tax, the total gross premium paid or to be paid for all nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, in that calendar quarter during which the taxable insurance contract or contracts took effect or were renewed,

shall be the entire gross premium charged on all nonadmitted insurance for the California home state insured as defined by subdivision (f) of Section 1760.1 of the Insurance Code.

(c) Subdivision (b) shall not apply to interstate motor transit operations conducted between this and other states. With respect to those operations, the tax shall be payable on the entire premium charged on all nonadmitted insurance, less any of the following:

(1) The portion of the premium that is determined to have been charged for operations in other states that have taxed the premium on operations in states of an insured maintaining its headquarters office in this state.

(2) The premium for any operations outside of this state of an insured who maintains a headquarters operating office outside of this state and a branch office in this state.

SEC. 33. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

SEC. 34. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, and 32 of this act shall become operative on July 21, 2011.

SEC. 35. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to forestall preemption on July 21, 2011, of state statutes pertaining to surplus line insurance taxation, eligibility, and broker licensure by the Nonadmitted Reinsurance and Reform Act of 2010, a part of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, it is necessary that this act take effect immediately.

























Approved \_\_\_\_\_, 2011

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*Governor*